

Ms. Sherril Huff
Director, King County Elections
919 Southwest Grady Way
Renton, WA 98057-2906

Re: Filing of Statement of the Charges in favor of the recall of Pacific Mayor Cy Sun

Dear Ms. Huff:

This letter shall constitute the statement of the charges in support of the recall of Pacific Mayor Cy Sun pursuant to RCW 29A.56.110 and Washington Constitution, Article 1, §§ 33 and 34. Pacific Mayor Cy Sun has committed acts of malfeasance and/or misfeasance while in office, and has violated his oath of office. This Statement of the Charges is verified under oath, states the acts complained of in concise language, gives a detailed description including the approximate date, location and nature of each act complained of, and is signed by the person(s) making the charge.

1. *Introduction to Statement of Charges in Favor of the Recall of Pacific Mayor Cy Sun*

A. *The election of Cy Sun as Mayor of the City of Pacific.*

The City of Pacific lies partially in King County and partially in Pierce County. Cy Sun was a write-in candidate for Mayor and filed his Declaration of Candidacy with the King County Auditor's Office on July 6, 2011, pursuant to RCW 29A.24.070(3).¹ Mr. Sun was elected Mayor of the City of Pacific, Washington on November 8, 2011 with 464 votes, a plurality of 40.1 % of the total vote cast.² He was sworn into office on December 27, 2011. The oath he took reads as follows:

1, Cy Sun, having been duly elected to the office of City of Pacific Mayor do solemnly swear (or affirm) that I will faithfully and impartially discharge the duties of this office as prescribed by law and to the best of my ability, and that I will support and maintain the Constitution of the State of Washington and of the United States of America.³

¹ Ex. 1, Declaration of Write-in Candidacy of Cy Sun.

² Ex. 2, 2011 General Election Results, City of Pacific, King County Elections' website.

³ Ex. 3, Oath of Office of Mayor Cy Sun.

B. *Pacific's form and structure of government.*

The City of Pacific is a non-charter code city⁴ and as such is governed by Ch. 35A.12 RCW. RCW 35A.12.100 defines the duties and authority of the Mayor. RCW 35A.11.010 sets forth the rights and duties of the City Council which includes, *inter alia*, the exclusive right to enter into binding contracts on behalf of the city. The authority of the Mayor under RCW 35A.12.100 is solely to veto an ordinance, but not to contract nor to cancel a contract approved by the Council.

The administration of the City of Pacific is divided into the following departments under PCC Title 2, whose heads are appointed by the Mayor subject to confirmation by a majority of the City Council: (1) City Clerk/Personnel Manager, (2) Finance Director, (3) Community Services Director, (4) Public Works/Community Development Director, (5) City Attorney, (6) Municipal Court Administrator, (7) Public Safety Director, (8) City Engineer.

When Cy Sun took office, the City Departments were headed by the following:

City Clerk/Personnel Manager	Jane Montgomery
Finance Director:	Maria Pierce
Community Services Director:	Linda Morris
Public Works/Community Development Director:	Jay Bennett
City Attorney:	Al Albin
Municipal Court:	Judge Stephen Rochon, Judge; Kelly Rydberg, Administrator
Public Safety Director:	John Calkins
City Engineer:	Jim Morgan

II. Executive Summary of the Charges.

In the short time since taking office, Mayor Sun: (1) has engaged in a pattern and practice of behavior that is unlawful, (2) has exceeded his authority as Mayor, (3) has interfered with and prevented the operation of the business of the City of Pacific, (4) has created a hostile work environment, (5) has failed to properly discharge his obligations to ensure the proper administration and enforcement of the laws, (6) has unlawfully retaliated against various city employees, (7) has interfered with valid contracts between the City of Pacific and third parties, (8) has imperiled various public works projects and grants for essential services to residents of the City of Pacific, and (9) has exposed the City of Pacific to potential liability for all of these actions as well as cancellation of its liability insurance coverage.

All of the acts by Mayor Sun that are summarized above and described herein were taken by him wrongfully, knowingly and with intent. If the situation is not immediately remedied, the

⁴ Pacific Municipal Code (PMC) §1.05.010.

continuing harm to the residents of the City of Pacific should not be underestimated and cannot be overstated.

III. Factual and Legal Sufficiency for Recall of Cy Sun

A. *The constitutional right to recall.*

The right to recall elected officials is a fundamental right of the people guaranteed by article I, sections 33 and 34 (amend. 8) of the Washington Constitution. *Chandler v. Otto*, 103 Wn.2d 268, 270, 693 P.2d 71, 72 (1984). Section 33 contains the substantive right of recall and provides that “[e]very elective public officer of the state of Washington ... is subject to recall and discharge by the legal voters of the state....” Section 34 permits the Legislature to “pass the necessary laws” to carry out section 33 “and to facilitate its operation and effect without delay.” Pursuant to this authority, the Legislature adopted Chapter 29.82 RCW, which was enacted “to provide the substantive criteria and procedural framework for the recall process.” *Matter of Pearsall-Stipek*, 136 Wn.2d 255, 262-63, 961 P.2d 343, 347 (1998). Chapter 29.82 RCW has since been re-codified as Chapter 29A.56 RCW. Recall statutes are construed in favor of the voter, not the elected official. *In re Recall of Washam*, 171 Wash. 2d 503, 510, 257 P.3d 513, 516 (2011).

Elected officials in Washington may be recalled for malfeasance, misfeasance, and violation of oath of office. Const. art. I, §§ 33–34; RCW 29A.56.110. “Courts act as a gateway to ensure that only charges that are factually and legally sufficient are placed before the voters, but we do not evaluate the truthfulness of those charges. RCW 29A.56.140.” *In re Recall of Washam*, 171 Wash. 2d 503, 510, 257 P.3d 513, 516 (2011).

B. *The requirement of factual sufficiency.*

Charges are factually sufficient if “taken as a whole they ... state sufficient facts to identify to the electors and to the official being recalled acts or failures to act which without justification would constitute a prima facie showing” of misfeasance, malfeasance, or violation of oath of office. *Chandler v. Otto*, 103 Wash.2d 268, 274, 693 P.2d 71 (1984). “Voters may draw reasonable inferences from the facts; the fact that conclusions have been drawn by the petitioner is not fatal to the sufficiency of the allegations.” *West*, 155 Wash.2d at 665, 121 P.3d 1190. *In re Recall of Washam*, 171 Wash. 2d 503, 514, 257 P.3d 513, 518 (2011).

A charge is factually sufficient if the facts “establish a prima facie case of misfeasance, malfeasance or violation of the oath of office” and are “stated in concise language and provide a detailed description” in order to “enable the electorate and a challenged official to make informed decisions.” *In re Recall of Telford*, supra (quoting *In re Recall of Wasson*, 149 Wn.2d 787, 791, 72 P.3d 170 (2003)(citing *Cole v. Webster*, 103 Wn.2d 280, 285, 692 P.2d 799 (1984); *Chandler*, 103 Wn.2d at 274, 693 P.2d 71)). In this context, “prima facie” means that, accepting the allegations as true, the charge on its face supports the conclusion that the official committed

misfeasance, malfeasance, or a violation of the oath of office. *In re Recall of Wade*, 115 Wn.2d 544, 548, 799 P.2d 1179, 1181 (1990).

RCW 29A.56.110 requires that “the person ... making the charge ... have knowledge of the alleged facts upon which the stated grounds for recall are based.” There is no requirement that the petitioner have firsthand knowledge of the facts. Rather, he or she must have some knowledge of the facts underlying the charges. *In re Recall of Wasson*, 149 Wn.2d 787, 791, 72 P.3d 170, 172 (2003); *In re Recall of Ackerson*, 143 Wn.2d 366, 372, 20 P.3d 930, 933 (2001). When the charge is violation of law, the Supreme Court has repeated that the petitioner must have knowledge of facts indicating that the official intended to commit an unlawful act. *Matter of Pearsall Stipek*, 136 Wn.2d 255, 263, 961 P.2d 343, 347 (1998).

The Court may use supplemental materials to determine whether there is a factual basis for the charge. *In re Recall of West*, 155 Wn.2d 659, 665-66, 121 P.3d 1190, 1193-1194 (2005). It may go outside the petition to determine whether there is a factual basis for the charge. *In re Recall of Anderson*, 131 Wn.2d 92, 95, 929 P.2d 410, 412 (1997).

C. *The requirement of legal sufficiency.*

To be legally sufficient, the charges “must specifically allege substantial conduct” amounting to misfeasance, malfeasance, or violation of the oath of office. *In re Recall of Washam*, 171 Wash. 2d 503, 514-15, 257 P.3d 513, 518 (2011). The legal sufficiency requirement protects officials from being “recalled for appropriately exercising the discretion granted him or her by law.” *Chandler*, 103 Wash.2d at 274, 693 P.2d 71. “Officials may not be recalled for their discretionary acts absent manifest abuse of discretion.” *In re Recall of Washam*, 171 Wash. 2d 503, 515, 257 P.3d 513, 518 (2011).

D. *Grounds for recall.*

The definitions of misfeasance, malfeasance and violation of the oath of office are found in RCW 29A.56.110:

For the purposes of this chapter:

- (1) “Misfeasance” or “malfeasance” in office means any wrongful conduct that affects, interrupts, or interferes with the performance of official duty;
 - (a) Additionally, “misfeasance” in office means the performance of a duty in an improper manner; and
 - (b) Additionally, “malfeasance” in office means the commission of an unlawful act;
- (2) “Violation of the oath of office” means the neglect or knowing failure by an elective public officer to perform faithfully a duty imposed by law.

IV. Acts and omissions constituting the Statement of the Charges

The acts for which this Statement of the Charges is brought are divided into the following general factual categories. Together, the charges amount to an indictment against Mayor Sun that he has conducted himself, while in office, in a manner that constitutes misfeasance, malfeasance and/or violation of his oath of office.

- A. Actions by Cy Sun that have decimated the Pacific Police Department and hindered the performance of their duty to protect and serve the people of Pacific,
- B. Actions by Cy Sun that have prevented the proper functioning of Pacific governmental departments,
- C. Actions by Cy Sun that have imperiled services to the elderly and lower income residents of Pacific,
- D. Improper and extra-legal exercise by Cy Sun of authority,
- E. Unlawful employment practices resulting in unnecessary and avoidable litigation against the City of Pacific, and
- F. Actions and/or failure to take action by Cy Sun that have imperiled the liability insurance coverage of the City of Pacific.

Pacific Mayor Cy Sun has engaged in the following actions, each of which independently constitutes misfeasance, malfeasance and/or violation of his oath of office, and thereby independently supports a finding of factual and legal sufficiency for his recall from office:

A. Actions with regard to the Pacific Police Department.

1. *Cy Sun unlawfully cancelled police vehicle purchases against the advice of city staff.*

Within days after taking office in January, 2012, Mayor Sun unilaterally ordered the cancellation of the contract to purchase new police vehicles against the advice of city staff.⁵ The purchase contracts had been approved by the City Council and entered into before Sun took office.⁶ Mayor Sun had told the Finance Director Maria Pierce and City Clerk Jane Montgomery not to disclose the cancellation order to Chief Calkins.⁷

As previously noted, under RCW 35A.11.010, the Pacific City Council has the exclusive right to enter into binding contracts on behalf of the city. The authority of the Mayor under RCW 35A.12.100 is solely to veto an ordinance, but not to enter into contracts nor to cancel a contract approved by the City Council. Mayor Sun had no statutory authority to cancel an existing, binding contract. His cancellation of the vehicle purchase contract was extra-legal.

⁵ Declaration of Sgt. Jim Pickett.

⁶ Ex. 4, City Council vote approving vehicle purchase contract.

⁷ Declaration of Jane Montgomery.

2. Cy Sun improperly attempted to influence a criminal investigation.

When Chief Calkins was placed on leave, Lt. Massey became the acting chief. On February 16, 2012 Councilmember John Jones received in the mail a complaint about City Council member Gary Hulsey. The complaint included an envelope containing criminal history records of Council Member Hulsey. The envelope in which the complaint and criminal history information were mailed bore the return name and partial address of former Mayor Hildreth. Upon information and belief, Mr. Hildreth had absolutely nothing to do with the complaint or the criminal history information and he requested that the Pacific Police Department conduct a criminal investigation. The inclusion of confidential criminal history records raised the question as to whether they were unlawfully acquired, and therefore whether a crime had been committed. Mr. Hildreth told Lt. Massey that prior to Jones' receipt of the material in the mail, he had had a telephone conversation with Paula Cook, a former Pacific resident, who had contacted him to inform him that Council Member Hulsey had been convicted of second-degree murder in the death of his wife in the 1970s. After Mr. Hildreth informed her that he wanted no part in any further discussion about this topic, Council member Jones received the envelope. The Pacific Police Department started a criminal investigation.⁸

Believing that Ms. Cook was the subject of the investigation,⁹ on Sunday, February 19, 2012, Mayor Sun called Lt. Massey and demanded that he meet with him at the Police Department "right now" to discuss the investigation. Lt. Massey called Sgt. Pickett, who was on duty. Mayor Sun requested that the three of them meet in the training room, where there was a white board. When the two officers took their seats, Mayor Sun proceeded to give them a lecture about schizophrenia, claiming that he had taken a psychology class in the topic at the University of Tokyo from a famous Nobel prize-winning instructor. He stated that there were three phases of schizophrenia-persecution, accusation, and violence. After lecturing them about schizophrenia, Mayor Sun told Lt. Massey and Sgt. Pickett that:

"... he believes P. C. is sick with this condition. . . The Mayor told us his wife had received an e-mail from P.C. Mayor Sun went on to tell us that someone told P. C. she was the subject of this investigation. He said she at first felt persecuted and now, based on the e-mail from her, she's feeling accused. He believes she's on the verge of committing violence either to herself or others. But the Mayor refused to disclose the contents of the message from her. . . He further believes that by bringing P. C.'s name into our investigation without solid evidence that we are violating her rights under clause 1 and 2 of the 5th amendment and clause 1 and 2 of the 14th amendment of the United States Constitution. He believes P. C. will end up suing us for five million dollars and that she will win. He further stated that with her e-mail message, he will be a witness against us. Mayor Sun

⁸ Ex. 5, Documents from the Pacific Police Investigation.

⁹ Ex. 6, An email Paula Cook sent to the City Clerk dated Feb 14, 2012 in which Ms. Cook revealed her knowledge about Mr. Hulsey's criminal record. This email was sent approximately two weeks before this information was disclosed by the media.

wanted us to stop the investigation in order to prevent P. C. from resorting to violence according to his estimation of her mental health. He wanted us to go tell P. C. that she is not the subject of an investigation.¹⁰

Because the investigation was ongoing, Lt. Massey appropriately refused.¹¹ Because Mayor Sun inappropriately attempted to influence the criminal investigation, Lt. Massey asked Sgt. Bos to forward the investigation to the Washington State Patrol and the US Postal Service.¹² While Lt. Massey was on the phone with Sgt. Bos, Mayor Sun called Lt. Massey on the phone and again demanded that he send an officer to the residence of Paula Cook and assure her that she was not the subject of the investigation.¹³ Lt. Massey refused.¹⁴

3. Cy Sun retaliated against Acting Chief Massey by removing him as Acting Chief.

On or about April 23, 2012, shortly before the council meeting on that day, after hearing that Lt. Massey had signed the letter of "no confidence" (discussed, below), Mayor Sun removed Lt. Massey from his position as Acting Chief and appointed Sgt. Pickett as Acting Chief. Thus, in the space of 3 ½ months, Mayor Sun removed two police managers with 40 years combined management experience.¹⁵

4. Cy Sun's irrational behavior caused the Police Department to take the drastic step of sending a letter to the City Council expressing no confidence in the Mayor.

On April 23, 2012, the majority of the police officers in Pacific signed and sent to the City Council a letter of no confidence in Mayor Sun.¹⁶ Based in large part on the facts set forth above, the eight signing Pacific Police Officers¹⁷ stated that:

Mayor Sun lacks the skills associated with leadership in general, shows no willingness to learn any matters related to city government, totally lacks interpersonal communication skills, he has not shown any transparency and direction, has not shown an interest in the police organization, he has been criticizing enforcement actions conducted by police officers without asking about the details or conducting any research in the matter.

¹⁰ Ex. 5, Ex. 7, Photos of white board notes by Mayor Sun.

¹¹ Ex. 6.

¹² *Ibid.*

¹³ *Ibid.*, Ex.8, Mayor Sun's newsletter of 4/23/12, Ex. 9, E-mail from Paula Cook dated April 28, 2012. Ms. Cook threatened to sue the City and the Mayor for his public exposure of her in his newsletter as the subject of the investigation.

¹⁴ Ex. 5.

¹⁵ Ex. 10, Letter from Mayor Sun firing Lt. Massey.

¹⁶ Ex. 11, Letter of no confidence from Pacific Police Officers.

¹⁷ The only police officers not to sign were Sgt. Pickett and Probation Officer Kim.

It is very clear that Mayor Sun is a profound believer in the “my way or the highway” theory. Mayor Sun operates by creating a realm of fear, under threat of being terminated. He made a statement right after Chief Calkins was placed on administrative leave that “anyone that doesn’t support him in the John Calkins matter will be fired.”

Based on the foregoing, the members of Teamsters Local 117 have to conclude that Mayor Sun is ineffective as a leader of the City of Pacific. So far, nothing positive has happened under his reign. Due to all the negative aspects surrounding this person, the morale and motivation has decreased. Therefore, this document is intended to serve as a vote of no confidence directed at Mayor Sun.

5. *Cy Sun caused the resignation of Sgt. Pickett.*

On June 10, Sgt. Pickett informed Mayor Sun of a possible federal investigation into questions about Mayor Sun’s identity so that he would not learn of it from a City Council member who was aware of the investigation. On Monday morning, June 18, Mayor Sun demanded of Sgt. Pickett to know the identity of the federal agent conducting the investigation. Sgt. Pickett explained that that would be improper, and that the agent in charge would contact Mayor Sun if and when the agent thought such a contact would be warranted. Mayor Sun responded by suggesting that Sgt. Pickett was working against him behind his back and had no confidence in him. That afternoon, Mayor Sun again demanded of Sgt. Pickett the name of the federal agent. Sgt. Pickett again informed Mayor Sun that that was against law enforcement protocol.¹⁸

Sgt. Pickett then resigned his position as Acting Chief after expressing concern that he was “being drawn into a pit of unethical behavior.”¹⁹ Facts giving rise to Sgt. Pickett’s resignation that pertain to the creation of a hostile work environment for and unlawful termination of City Clerk Jane Montgomery are set forth in Section B. 1.²⁰

6. *Mayor Sun admitted destroying public records.*

On July 18, Mayor Sun called a staff meeting of city employees. In the meeting, Mayor Sun read aloud the letter described in Section B.1, *infra*, that City Clerk Jane Montgomery’s lawyer Joan Mell had written on behalf of Ms. Montgomery. In her letter, Ms. Mell expressed concerns about the preservation of city documents. After reading to the staff about Ms. Mell’s concerns that documents be preserved and her warning that he may be exposed to criminal liability if records were not preserved, Mayor Sun expressed outrage at the charge, citing his oath when he was in the military and the oath of office he had taken when sworn in as Mayor.²¹ The Mayor then ordered Lt. Massey, who had just arrived, to turn over the keys to the City Clerk’s office

¹⁸ *Ibid.*

¹⁹ Ex. 12, Sgt. Pickett’s resignation letter as Acting Police Chief, dated 6/18/12.

²⁰ *Ibid*

²¹ Ex. 13, Paula Wiech Whistleblower complaint dated Aug. 13, 2012, Declaration of Paula Wiech.

within thirty minutes. He refused.²² Paula Wiech, the Associate City Planner, openly voiced at the meeting that she knew he had destroyed records in the past and was not comfortable with him having unsupervised access to employee personnel records, including medical records.²³ The Mayor then publicly admitted to having unlawfully and fraudulently altered city records.²⁴ He then stated that he had “dealt with” the Hansen Litigation and that the wetlands were being filled in.²⁵ Mayor Sun immediately placed Ms. Wiech on administrative leave. Her union representative informed her later that same day that she was not on leave and could go back to work.²⁶

7. Cy Sun was arrested for disobeying a lawful order; he then attempted to fire the arresting officers.

On the same day, after learning that Mayor Sun admitted to destroying public records, the Pacific Police Department contacted the King County Sheriff to conduct a criminal investigation. Lt. Massey declared the Clerk’s Office a potential crime scene. The next day, he ordered the Pacific Police Department to secure it to prevent entry by anyone without authorization. Ms. Montgomery had given her keys to Sgt. Jim Pickett on June 15th because she was going to Clerk’s school the following week and Sgt. Pickett was going to come to City Hall daily to ensure the tape was changed on the server. This arrangement had been approved by City Attorney Ken Luce and the City Council, all of whom had concerns about protecting the vital records of the City. When Sgt. Pickett resigned as Acting Chief, he gave the keys to Lt. Massey. Lt. Massey acted at the advice and request of the King County Sheriff’s Office to keep the office and records secure.²⁷

On July 19th, Mayor Sun attempted to enter the Clerk’s office. He was accompanied by a locksmith. Lt. Massey told the Mayor he could not enter. The Mayor ordered the locksmith to open the door. Lt. Massey told the locksmith he would be arrested if he attempted to do so. The Mayor and the locksmith left. The Pacific Police Department placed crime scene tape across the entry door, which was locked, and posted uniformed police officers in the City Hall hallway outside the door to the Clerk’s Office to prevent unauthorized entry. A short time later, Mayor Sun returned with several employees from the public works crew wheeling hand trucks, the locksmith, and a local television news crew. The doorway was clearly marked with crime tape. The two uniformed police officers standing guard outside the door repeatedly and politely asked the mayor to step away and warned him not to attempt to physically force his way through them and into the office. He continued, attempting to push his way past them toward the door. They

²² *Ibid*, See Section B.1, *infra*.

²³ *Ex. 13*.

²⁴ *Ibid*.

²⁵ *Ibid*. The City has been in litigation over real property commonly known as the “Hansen Property” over whether Mr. Hanson had unlawfully filled in wetlands on the Hanson Property.

²⁶ *Ibid*.

²⁷ *Declaration of Lt. Massey*.

arrested him. Their supervising sergeant was there as well. During his arrest, Mayor Sun tried to fire the police officers as they were performing their lawful duty.²⁸

8. *Cy Sun unlawfully attempted to discharge the arresting police officers.*

On July 23, Mayor Sun sent formal notice to each of the four police officers of their right to a Loudermill hearing before their employment was terminated. He scheduled the hearing for July 27. In the notices, Mayor Sun stated that:

“I pointed my finger at you and said out loud, ‘You’re fired!’”

He went on to announce the reasons for their employment termination stemmed from:

“your supervision resulting in my arrest and incarceration.

The reasons for Discharge:

1. Gross insubordination.
2. Unlawful harassment and discrimination.
3. Discourteous and prejudicial conduct.
4. Willful and intentional violation of lawful orders. . . and
5. Unlawful anarchy and mutiny against the City of Pacific.”²⁹

The required Loudermill hearings for the four officers were held on July 27 amidst protesters calling for Sun's recall. The first Loudermill hearing was held with regard to Sgt. Bos' unlawful termination. When his union representative began to speak, which was his legal right, Mayor Sun abruptly gaveled him down, stating that the union had no right to accompany the officer. He then adjourned the hearing as concluded. Sgt. Bos has returned to work. The second Loudermill hearing began about a half hour later. The union representative attended with the officer. The union representative described how the hearing went: "When I spoke, he (the mayor) ended the meeting...gavel and all." All four hearings followed the same format: the mayor gaveled the hearing to an end when the union representative tried to begin the termination defense on behalf of the officers. All of the police officers have since returned to work.³⁰

9. *Cy Sun imposed a hiring freeze on Pacific Police Department in violation of his obligation to the residents of the City.*

On July 16, 2012 Mayor Sun wrote a letter to Lt. Massey in which the mayor promised that he “shall review the civil service findings of the recent candidates (for Chief) and act on my power of appointment,” further stating that “I shall decide whom I will hire to fulfill the vacant

²⁸ *Ibid.*, KOMO News website video: <http://www.komonews.com/news/local/Mayor-of-Pacific-arrested-by-his-own-police-force-163076986.html?tab=video&c=y>

²⁹ *Ibid.* Ex. 14, Termination Letters of the police officers. This last charge was leveled against Lt. Massey only.

³⁰ *Massey Declaration.*

position.”³¹ The next day, the mayor emailed Lt. Massey that he was freezing all hiring in the Police Department.³² The Pacific Police Department had, before Mayor Sun’s term began, 10 officers, an evidence custodian and a Police Specialist. Since he took office, as a result of his refusal to perform his duties of filling vacant police positions and acts of malfeasance, the Pacific Police Department has become dangerously understaffed with only 9 officers and the Police Specialist.

The consequences of Mayor Sun’s retaliation against the Pacific Police Department have been devastating. The crime statistics speak for themselves. The table below shows the 2011 – 2012 year over year crime statistics for the period from July 1 through August 15. In 2011, the Pacific Police Department had 11 officers, including a Chief of Police. In 2012, the Department had only 9 officers, with the Chief’s duties being split between the officers. As a result, they have had less time to devote to self-initiated enforcement actions, the first line of defense to prevent more serious crimes.³³ The crime statistics show that property crimes have doubled since last year:³⁴

July 1 through August 15, 2011	July 1 through August 15, 2012
11 officers	9 officers
51 Self-initiated enforcement actions	15 Self-initiated enforcement actions
25 property crime investigations	51 property crime investigations

As the Mayor of a non-charter code city, Mayor Sun has the statutory duty under RCW 35A.12.100 to: “. . . see that all laws and ordinances are faithfully enforced and that law and order is maintained in the city. . .” His pattern of misconduct has resulted in endangerment of the residents of Pacific, violation of RCW 35A.12.100, and violation of his oath of office.

³¹ Ex. 15, Letter from Mayor Sun to Lt. Massey, July 16, 2012.

³² Ex. 16, Email from Mayor Sun to Lt. Massey, July 17, 2012.

³³ Self-initiated enforcement actions refer to actions that a police officer initiates as opposed to being dispatched as a result of a 9-1-1 call. The routine traffic stop is an example of a self-initiated activity. Traffic enforcement is the first line of defense against criminal activity. Criminals are a lot less likely to show up in an area where they’re probably going to end up being pulled over for a traffic or vehicle equipment (i.e. defective lights) violation. Take note of the correlation between the lack of self-initiated activity and the increase in property crimes. There is automatically a decrease in self-initiated activity when the number of officers is reduced. The lack of self-initiated activity shows that the increase in property crimes is taking more of the officers’ time to write reports and conduct investigations. Therefore, there is no time for self-initiated activity.

³⁴ *Pickett Declaration.*

10. Cy Sun unlawfully ordered the Pacific Police to serve as his personal police force and to conduct a secret investigation to discover the identity of those responsible for disseminating the "Echo Papers."

In April, 2012, A concerned citizen or citizens distributed a 10 page report entitled: "Who is the Real Cy Sun?" (the "Echo Papers")³⁵ In it, the citizens documented a number of apparently false statements made by Cy Sun in Echo, Oregon where Mayor Sun used to live and where he still owns property, and in Pacific, Washington. The Echo Papers began with a list of quotes by supporters of Mayor Sun (presumably because their support for him was viewed to be toxic) and then list key employees who were either fired or resigned. The Echo Papers next memorialized a number of far-fetched tales allegedly told by Mayor Sun to the residents of Echo, Oregon (i.e., that he was the personal physician of Henry Kissinger and President Eisenhower, was a brain surgeon, was the only ferrier in the country allowed to shoe Secretariat, having been flown in to shoe "her", etc.) and to residents of Pacific.

The Echo Papers then memorialized statements that Cy Sun has allegedly made to residents of Pacific about his property in Oregon, e.g.:

- "I have a ranch in Oregon that is over 700 acres. . .My son lives in the 5 bedroom home on the ranch and runs the operation. There are four farm hands that live in cottages on the property. . .
- I have a \$2,000,000.00 line of credit for operating the farm.
- I am a pilot and I flew my plane to the east coast to secure the line of credit.
- I am a Nuclear Physicist. . ." ³⁶

The Echo Papers conclude that Mayor Sun's statements about his Echo, Oregon property were false. The parcel is 20 acres. The assessed value was \$10,831. The improvements are only a 1958 single-wide trailer (420 sq. ft.) and a wooden outbuilding (420 sq. ft.). The only sign of animals were dead chickens and peacocks whose lifeless bodies were visible in the rundown coops on the property.³⁷

Mayor Sun's reaction to the distribution of the Echo Papers was swift. He wrote a letter to Lt. Massey on April 22, 2012 in which he:

³⁵ Ex. 17, Sun letter of 4/22/12 to Chief of Police and attached circulated report re: his Echo, OR property

³⁶ *Ibid.* According to reports quoted in the Echo Papers, at various times Mayor Sun has asserted that he: (1) was a nuclear physicist, (2) was a world famous brain surgeon, (3) was a pilot, (4) was the personal physician to Henry Kissinger and Dwight Eisenhower, (5) was the only ferrier allowed to shoe Secretariat (who Mr. Sun allegedly identified as a mare), (6) was in the commandos in WWII and Korea, (7) was a stand-in for Don Ho in Hawaii. Since he has refused to produce required documentation of legal status qualification to hold the position of Mayor ("I-9 Documentation") pursuant to The Immigration Reform and Control Act of 1986, the Immigration and Naturalization Act of 1990, Title VII of the Civil Rights Act of 1964, and 8 CFR Part 274A, it has not been possible to confirm these tales.

³⁷ *Ibid.*

. . . order[s] the City of Pacific Police Department to assign a trusted, honorable personnel (sic) to investigate and document the findings of [the Echo Papers] and submit it to the City of Pacific. The report shall be comprehensive and complete, and could be submitted in a Court of Law.

The following, but not limited, statements and questions shall be considered for investigation.

1. Illegal trespass, taking photographs and documenting observations with a Court order, warrant, etc., on property [in Echo, Oregon]. Note: the Constitution of the United States protects private property, unless there is knowledge of criminal activities and that to enter private property, there must be a Court Order. . .
7. Investigate the Umatilla County Sheriff Dept., OR., if they were involved. . .
11. A polygraph test(s) conducted by Pierce County Police Department on the person (s) who conducted the 5100 Gerone, Echo, OR., investigation. . .
12. Names of all other person(s) involved in the investigation of 5100 Gerone, Echo, OR., including those who participated in the conspiracy.
13. A statement from the City of Pacific Police Department, if the conducted investigation of 5100 Geron, Echo, OR., was legal as stated in the authority of Law Enforcement and the City of Pacific Code (authorizing the City of Pacific Police Department to conduct an investigation on the Mayor of Pacific).

The investigation shall be discreet and conducted immediately.³⁸

It seems unnecessary to have to point out that the Pacific Police Department has no jurisdiction to conduct an investigation into an alleged trespass that occurred in Umatilla, Oregon, that documenting the true state of facts about the Mayor's property and lies about his property are constitutionally protected, and that the Mayor's attempt to order the Pacific Police Department to serve as his personal police force and to conduct on his behalf a secret investigation into his enemies is, itself, unlawful as well as unconstitutional.

Mayor Sun's conduct with regard to the Pacific Police Department demonstrates his utter failure and refusal to fulfill his oath of office and constitutes misfeasance or malfeasance in office. Mayor Sun has retaliated against individual police officers and the Police Department as a whole for refusing to follow his despotic, unlawful and irrational self-styled "orders." The manner in which Mayor Sun has conducted himself with regard to the Pacific Police Department raises serious questions about his capacity, judgment and ability to exercise his office in a manner

³⁸ *Ibid.*

consistent with constitutional principles, not to mention the laws of the State of Washington, King and Pierce County codes, and the Pacific City Code.

B. *Cy Sun's actions have impeded the proper functioning of Pacific government departments.*

Mayor Sun has engaged in a pattern of activity since taking office in which a hostile work environment has been created for city employees. He has retaliated against them for refusing to follow his imperious and unlawful demands. Mayor Sun has consistently violated state and local laws and interfered with the proper exercise of authority by city employees. His conduct has depleted the city departments of key employees, and has rendered the government of the city unable to provide essential city services to the residents.

Pacific Mayor Cy Sun has engaged in the following actions, each of which independently constitutes misfeasance, malfeasance and/or violation of his oath of office, and thereby independently supports a finding of factual and legal sufficiency for his recall from office:

1. *Cy Sun created a hostile work environment for City Clerk Jane Montgomery, failed to fulfill his statutory duties and unlawfully terminated her.*

On June 4, Howard Erickson, key supporter of Mayor Sun, entered City Hall. He stopped city employee Becky Cromwell in the hallway and said in a loud, aggressive tone that he was “going to get that bitch [referring to Jane Montgomery] fired.” Ms. Cromwell reported this to Ms. Montgomery, who sought Mr. Erickson to attempt to calm him and address his concerns.³⁹

On a previous occasion in March, Erickson had come to City Hall unannounced, at which time Finance Director Maria Pierce had discovered him sequestered in an “Employee Only” area where the city mailboxes were located. Concerned about his furtive trespass and his potential unauthorized access to confidential employee files, Ms. Pierce questioned Mr. Erickson at that time, at which point Mr. Erickson loudly and aggressively bellowed that he was looking for Ms. Montgomery’s job description, crudely stating that she had no authority to be involved in city hiring processes. This comment was precipitated by his anger over the fact that Fran Neumiller, his pet pick for the vacant Community Services Director position, had not been granted an interview by Ms. Montgomery, who had been in charge of that hiring process. Ms. Pierce immediately reported Mr. Erickson’s trespass to Ms. Montgomery and politely asked to speak with him. Ms. Montgomery explained to Mr. Erickson her role as the Personnel Director and that Ms. Neumiller was unqualified for the position.⁴⁰

When the June 4 incident occurred, Ms. Montgomery attempted to again speak with Mr. Erickson, and brought with her temporary city employee Sheryl Finwall, a friend of the Mayor

³⁹ Ex. 18, Montgomery Whistleblower complaint, *Montgomery Declaration*.

⁴⁰ *Ibid*.

and Mr. Erickson. They found Mr. Erickson in city employee Joanne Futch's office. When Ms. Montgomery attempted to speak with Mr. Erickson about his derogatory comments to Ms. Cromwell, he exploded in anger, aggressively got very close to her face, and loudly screamed in her face that she was "a fucking bitch," a "backstabbing bitch" and accused her of being "in league" with John Calkins, the Chief of Police, and John Jones, the Mayor Pro Tem.⁴¹

Ms. Montgomery asked him to sit down and have a reasonable discussion with her. Mr. Erickson refused and stormed out of the building. Ms. Futch, Ms. Finwall and Ms. Montgomery were all in a state of shock and disbelief. Ms. Montgomery feared for her personal safety in light of the continuing and escalating harassment of her by Mr. Erickson. She called the City Attorney and he advised her to inform the Mayor. They jointly agreed that she should report the incident to the Acting Police Chief, Sgt. Jim Pickett, as well and should ask him to accompany her to speak to Mayor Sun.⁴²

After immediately reporting the incident to Sgt. Pickett, Ms. Montgomery and Sgt. Pickett met with Mayor Sun, and Ms. Montgomery explained to the Mayor what Mr. Erickson had done. Sgt. Pickett informed him that probable cause existed to arrest Mr. Erickson for harassment. Mayor Sun confessed to Sgt. Pickett that Ms. Montgomery had come to him at the time of the March incident with Mr. Erickson and that he had promised her at that time that he would rectify the situation, but that he had done nothing about it. Mayor Sun asked Ms. Montgomery if she would give him another chance to help her now, promising to drive to Mr. Erickson's house and to intervene on her behalf to prevent a recurrence by Mr. Erickson of his assaultive behavior. Ms. Montgomery acquiesced, but informed Mayor Sun that she still reserved the right to file an incident report with Sgt. Pickett. Mayor Sun informed them that he would meet again with them after he had spoken to Mr. Erickson.⁴³

Mayor Sun never attempted to meet again with either of them. Mr. Erickson appeared that night at the City Council meeting where Ms. Montgomery was performing her duties, at which time the Mayor acted in a friendly, cordial manner to Mr. Erickson.⁴⁴

Not having received the promised action by Mayor Sun, on June 5 Ms. Montgomery went to King County District Court and obtained a temporary anti-harassment protection order against Mr. Erickson. While she was at the courthouse, she received a telephone call from Interim City Treasurer Betty Garrison, who reported to her that Mayor Sun had just asked her to draft a letter to be signed by him and addressed to Mr. Erickson in which Mayor Sun had purported to hire Mr. Erickson as the City Building Official/Code Enforcement Officer at the pay rate of \$30 an hour.⁴⁵ This purported hiring action by Mayor Sun was beyond his authority as Mayor, violated the city collective bargaining agreement with Teamsters Local 117 Public Works Clerical

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

Contract, and violated City policy. Mayor Sun later received a cease and desist order from Evie Shannon, Teamsters Representative. Ms. Shannon clearly told the Mayor that any agreement to have someone work in that position would have to be negotiated with the Union, after which the Mayor would need approval from the City Council, as that position was still being occupied by a union employee who was out on medical leave. More than that, Mayor Sun's purported action demonstrated his callous and complete disregard for Ms. Montgomery in light of how she had been threatened by Mr. Erickson and showed his complete lack of any concern for her safety or for such outrageous, improper and unprofessional treatment of an employee of the City.

Mayor Sun's failure to act, and purported attempt to hire Mr. Erickson after the incidents in question, constitutes a violation of his obligation to oversee the enforcement of equal employment opportunity laws under Pacific Municipal Code Section 2.88 and under state and federal law.

Later that week, it was disclosed that Mayor Sun and Mr. Erickson – who was not a City employee – were signing off on building permits; despite the fact that they were neither qualified nor authorized.⁴⁶ When Ms. Montgomery was informed of this and was shown the paperwork confirming these actions, she informed the City Attorney and the City Insurance Company. The City Attorney then wrote a letter to the employees in the Public Works Department on June 7, 2012, which he asked Ms. Montgomery to deliver to them. The letter directed the staff to call all of the individuals who had their permits signed off on by the Mayor and Mr. Erickson and to advise them that their permits were not valid. Ms. Montgomery delivered the email to the employees as instructed. The City Attorney informed Mayor Sun that his actions were unlawful.⁴⁷ The Teamsters Union also sent Mayor Sun a Cease and Desist letter.⁴⁸ Ms. Montgomery was also asked by the Union Representative Evie Shannon to inform all union employees that they would not be fired if they failed to follow the unlawful directions of the Mayor. She sent an email to them at his request with the prior approval of the City Attorney.⁴⁹

On June 6, 2012, Ms. Montgomery learned that on the previous day Mayor Sun had taken active files out of the Public Works Department, had loaded them in his personal vehicle and had taken them to Mr. Erickson's home. The files related to permit applications that required review for compliance with city, county and state law before approval. Disturbed, Ms. Montgomery immediately left her office to walk to the Public Works Department in an attempt to learn what was going on. She ran into the Mayor in the hallway. Ms. Montgomery advised Mayor Sun that his actions would put him personally, and the City, at great risk. Mayor Sun said to her angrily and accusatorily: "Are *you* telling *me* what to do?" Ms. Montgomery told the Mayor that she

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ Ex. 19, Teamster's Union Cease and Desist letter.

⁴⁹ Ex. 18.

was not telling him what to do, but was informing him what could happen if he continued to do what he was doing. Mayor Sun dismissed her rudely, ignored her and walked away.⁵⁰

On Friday, June 8, Ms. Montgomery filed a whistleblower complaint against Mayor Sun.⁵¹ She listed the following specific instances of improper governmental action by Mayor Sun:

- a. Violation of federal law for failure to produce required documentation of legal status qualification (“I-9 Documentation”)⁵²;
- b. Violation of state and local law for:
 - i. Unlawfully signing off on building permit applications acting in an extra-legal capacity as City Planner and City Building Official;
 - ii. Authorizing and allowing a non-city employed, unauthorized, unqualified city resident, Howard Erickson, to sign off on and thereby approve multiple building permits, gas tests, and final inspections;
 - iii. Removing city documents and records and granting access to those records to unauthorized persons;
 - iv. Destroying city records;
 - v. Attempting to alter historical factual Public Works documents;
 - vi. Interfering with the conduct of ongoing civil litigation (“Hansen,” “Hansen Property” or “Hansen Litigation”);
 - vii. Attempting to coerce a city employee, Mr. Kelly Tally, to falsely accuse a former city employee, Mr. Roger Smith, of being responsible for wetlands being filled by Hansen in order to falsely manufacture cause to fire Mr. Tally.
- c. Abuse of authority for:
 - i. Intentional disregard of legislative action by the City Council in regard to the non-confirmation of Leanna Mason for the position of Community Services Director;
 - ii. Refusal to follow the City Policy and Procedure in regard to Hiring Practices and Procedures;
 - iii. Unlawfully placing an unqualified, unconfirmed person in the position of Public Works/Community Development Director and as such violating city policy and procedure with willful intent to subvert the rights of the legislative body of the city;
 - iv. Violating union agreements by offering union employees a bribe of financial gain in a closed secret meeting;

⁵⁰ *Ibid.*

⁵¹ Ex. 18.

⁵² Pursuant to The Immigration Reform and Control Act of 1986, the Immigration and Naturalization Act of 1990, Title VII of the Civil Rights Act of 1964, and 8 CFR Part 274A. This is also a violation of City of Pacific Policy 200-002, as cited in Ms. Montgomery’s whistleblower complaint.

- v. Attempting to coerce an on-loan Pierce County employee to conspire with him to falsify and create records with the intent to frame a union employee whom the Mayor wanted terminated;
- vi. Making intentionally false statements to the City Council and the public about the requirements of the CERB board and as such risking the loss of the Valentine Avenue Project. The Mayor's actions would have caused loss of the project and loss of approximately \$800,000 for repayment of a grant and further costs likely from a lawsuit from the City of Sumner.
- vii. Refusing to follow the advice of the City Attorney and the Cities Insurance Company in regard to the Public Safety Director who was placed on administrative leave by the Mayor.
- d. Gross waste of public funds for:
 - i. Refusing to fill the Public Works/Community Development and City Engineer positions which have created a cost overrun on the Stewart Road project of at least \$62,000 as a result of a lack of sufficient staff. There will likely be more cost overruns as the city has had to use the services of outside engineering firms, which amount will be determined when the budget is submitted;
- e. Creating a Hostile Work Environment by:
 - i. Creating a climate of fear and intimidation for any city employee who does not comply with his mandates even if the actions demanded by Mayor Sun would be in violation of the law;
 - ii. Threatening employees if they talk to City Council members. Mayor Sun gave specific orders for no employee to report anything to the City Council.
 - iii. Using City employees to harass other employees who he felt were not loyal to him.

Ms. Montgomery called Councilmember Steiger on the morning of Saturday, June, 9 and asked that her report be put on the agenda the following Monday, June 11th. She also informed City Attorney Ken Luce, and sent him the complaint via email. Mr. Luce called Ms. Montgomery and told her he would share the complaint with Mayor Sun.⁵³ That same day, Sgt. Pickett was called in to City Hall by Mayor Sun, who requested that Sgt. Pickett deliver two letters to Ms. Montgomery, one of which purported to immediately place her on administrative leave, and the other setting a Loudermill Hearing for the next Monday, June 11 at 10:00 am. Mayor Sun told Sgt. Pickett at that time that he intended to fire Ms. Montgomery before the City Council meeting that evening; despite not having yet held her Loudermill Hearing. Sgt. Pickett attempted to dissuade him, but Mayor Sun stated that he believed that she was working behind his back and that he intended to fire her.⁵⁴ Sgt. Pickett was unable to find Ms. Montgomery's current address

⁵³ *Montgomery Declaration.*

⁵⁴ *Pickett Declaration.*

and the Mayor then called Betty Garrison in to search for her address. Her current address was not located in the computer system.⁵⁵

On Sunday evening, June 10, the City Attorney called Sgt. Pickett and told him that an effort to serve papers on Ms. Montgomery at home after she had filed a whistleblower complaint would border on harassment and might be tortious. The City Attorney advised the Mayor not to terminate Jane Montgomery.⁵⁶

The Mayor refused to heed the City Attorney's advice and had city staff place a padlock on Ms. Montgomery's office door, preventing her from gaining access. Ms. Montgomery saw a text message from Sgt. Pickett over the weekend in which he informed her that the Mayor had written a letter that he wanted Sgt. Pickett to serve on her. She called Mayor Sun on Monday, June 11 and told him she was on her way to work. The Mayor told her: "Go home. I put a lock on your door." Ms. Montgomery then called Mr. Luce who advised her to call the Police Department when she got to work and inform them that Mr. Luce instructed them to cut the lock so she could gain access to her office. She did so. A City Police Officer cut the lock.⁵⁷

Mayor Sun told other city employees that they were not to speak or interact with Ms. Montgomery, that she was not to be trusted, and that she had been attempting to get them fired.⁵⁸ The remainder of that week, Jane Montgomery had to have her office guarded to ensure her safety.⁵⁹ The next week, June 17-22 Jane was gone to Clerk School, but the Mayor told city employees that he would not allow her to have a guard when she returned on the 25th of June.⁶⁰ Jane Montgomery did not return to work on the 25th, and on the advice of her doctor she went out on medical leave due to the continued stress and the impact on her health.

On July 9, Mayor Sun terminated Ms. Montgomery's access to her email account and informed the City Council and the union representative, Evie Shannon, that he was unilaterally creating a new City administrative position entitled "City Clerk/ Interim Treasurer," even though Ms. Montgomery occupies the positions City Clerk/Personnel Manager. He subsequently terminated her Blackberry services.⁶¹

On July 11, Mayor Sun sent a letter to Ms. Montgomery ordering her to turn the keys to the Clerk's office over to the Interim Treasurer, Betty Garrison, and to provide to him access to city personnel files.⁶²

⁵⁵ *Ibid.*

⁵⁶ *Montgomery Declaration.*

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² *Ibid.*

On July 13, Mayor Sun told a city employee that he was conducting surveillance on Ms. Montgomery's residence.⁶³

On July 17, Ms. Montgomery's lawyer, Ms. Joan K. Mell, wrote to Mr. Sun and informed him that Ms. Montgomery had arranged for the preservation of city documents when she took her leave and provided the keys to the office to the Acting Chief of Police.⁶⁴

On July 18, the Mayor held a staff meeting at which he read aloud Ms. Mell's July 17 letter. The Mayor upbraided Ms. Montgomery (who was not present) in front of the staff for "going behind my back" and for securing the city records by providing the keys to the Acting Police Chief. Mayor Sun told the staff that he was firing Ms. Montgomery. He then placed Paula Welch on administrative leave for expressing her concerns over his destruction of records, which he openly admitted he destroyed. Mayor Sun also threatened law enforcement with insubordination and suspension if they did not turn over the keys to allow him to access the Clerk's office and to turn over personnel records.⁶⁵

On July 23, Ms. Mell met in executive session with Mayor Sun, the City Council and the City Attorney. The City Attorney had previously met with the Council President, Ms. Montgomery and Ms. Mell to come up with a plan which would allow Ms. Montgomery to return to work in safety. The Mayor refused to agree to any of the proposals and was told by the Council that he was to meet with the City Attorney the next day and come up with his own proposals to ensure her safety. Ms. Mell told the Mayor she had been told that he had stated the week before that he had terminated Jane Montgomery. He asked Ms. Mell for the identity of the source of this report and she told him that she had heard it from staff. He said it was a lie.

The Mayor did not contact the City attorney or Ms. Mell the following day, July 24, as directed by the Council. On July 25, Ms. Mell received a termination letter from Mayor Sun which had been dated July 23 and had clearly been written prior to the Council executive session late the night of July 23.⁶⁶ In his July 23 letter, Mayor Sun unlawfully terminated Ms. Montgomery's employment as of the date of the letter; despite the fact she had sent her whistleblower complaint to the City Council on June 8. In his July 23 letter, Mayor Sun set a Loudermill hearing for July 26 at 10:00 am. At the appointed time of the hearing, Montgomery, along with her attorney, media cameras and others were forced to wait outside the locked hearing room, in which Mayor Sun was holding a meeting with three unidentified men. Shortly after 10:00 am, the three unknown men left the hearing room and Mayor Sun ran out the back door, left the building and drove off in his car. He refused to speak with the media, never said a word to Ms. Montgomery

⁶³ *Ibid.*

⁶⁴ Ex. 20, Mell Letter to Mayor Sun dated July 17.

⁶⁵ *Montgomery Declaration.*

⁶⁶ Ex. 21, Cy Sun letter dated July 23, 2012.

or Ms. Mell and failed to commence the hearing he had scheduled.⁶⁷ Ms. Montgomery then filed a \$2.2 Million damage claim against the city.⁶⁸

To date, the Clerk's Office is unable to function with no one in control.

Mayor Sun's conduct described above constitutes a pattern and practice of unlawful behavior, is in excess of his authority as Mayor, has interfered with and prevented the operation of the office of the City of Pacific, created a hostile work environment, constitutes a failure to properly discharge his obligations to ensure the proper administration and enforcement of the laws including equal employment opportunity and employment discrimination laws, and amounts to unlawful retaliation against Jane Montgomery.

2. Cy Sun caused the resignation of Director of Public Works/ Community Development Jay Bennett and has not replaced him.

Mr. Bennett had filled the dual roles of Public Works Director and Community Development Director since 2006, securing over \$15 million in grants for city projects during his tenure.⁶⁹ Before he was elected and in all of his campaign materials, Mayor Sun stated that he would fire Mr. Bennett.⁷⁰ As a result, Mr. Bennett resigned prior to Mayor Sun taking office. Mayor Sun has not submitted the name of a qualified replacement for either position in the 8 months that he has been in office. The Public Works Department is in a state of stagnation, unable to function effectively.⁷¹

3. Cy Sun caused the resignation of Finance Director Maria Pierce and has not replaced her.

Maria Pierce resigned as Finance Director on April 13, 2012 as a result of the hostile and stressful environment that Mayor Sun had created.⁷² Mayor Sun has not submitted the name of a qualified replacement for Finance Director in the 5 months during which the position has been vacant. An interim Treasurer is currently running the department.⁷³

4. Cy Sun caused the resignation of Engineer Jim Morgan and has not replaced him.

Mr. Morgan, who had been with the city as a contract engineer from 2005 - 2007 and had been City Engineer since 2007, resigned after a pattern of verbal harassment by Mayor Sun. Mr.

⁶⁷ *Montgomery Declaration.*

⁶⁸ Ex. 22, Montgomery Claim for Damage Form.

⁶⁹ *Montgomery Declaration.*

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² *Montgomery Declaration.*

⁷³ *Ibid.*

Morgan was well-respected by community and staff. In late 2011, the City received a letter from Cy Sun praising Mr. Morgan's abilities as engineer, stating, "I strongly recommend that he be carefully and adequately cared for both in compensation in his capacity and as an asset to the City of Pacific--- an exceptional Professional Engineer."⁷⁴ In the first staff meeting Cy Sun held as Mayor, he assured the staff that no one was going to be fired.⁷⁵ However, in the first meeting that he held privately with Mr. Morgan, Mayor Sun stated to him: "you don't know shit." This was the first of many times the Mayor used profanity and aggressiveness toward Mr. Morgan. It got to the point that he was so uncomfortable coming to work that he had knots in his stomach.⁷⁶ Mayor Sun told Mr. Morgan that he felt Morgan was a good engineer but that he was belligerent. Shortly after that, Mr. Morgan gave Mayor Sun his resignation letter.⁷⁷

The position of City Engineer is vacant. Mayor Sun has not submitted the name of a qualified replacement for City Engineer in the 7 months during which the position has been vacant. The department is in a state of stagnation, unable to function effectively.⁷⁸

5. Cy Sun terminated Community Service Director Linda Morris and has not replaced her.

Mayor Sun fired Linda Morris as Community Services Director on February 7, 2012. Mayor Sun attempted to fill the position without following the procedures outlined in PMC 2.92 against the advice of the City Clerk and the City Council. The vacancy was advertised in March, 2012. Candidates were interviewed and recommendations were made for the hire by a committee. Mayor Sun disregarded the recommendations. He submitted an unqualified person for the position who was not confirmed by the City Council. The position of Community Services Director is currently held by Sheryl Findwall as a temporary employee under a 90 day contract. Ms. Findwall was hired and confirmed by the Council to attempt to stop the loss of Food Lifeline services and commodities offered to the community's elderly and vulnerable.⁷⁹ The Food Lifeline prior to the firing of Linda Morris, sent a letter stating the Community center was doing well with their program.⁸⁰ Council President Leanne Guier suggested the hiring of Ms. Findwall as remedy with the knowledge that the Mayor, who approves of Ms. Findwall, would most likely agree.

⁷⁴ Declaration of James J. Morgan

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Montgomery Declaration.

⁷⁹ Ex. 23, Letter from Food Lifeline dated July 12, 2012.

⁸⁰ Ex. 24, Letter from Food Lifeline dated January 26, 2012.

6. *Cy Sun improperly appointed Howard Erickson as Building Inspector, approved building permit applications without authority, and unlawfully hired an independent contractor to perform the functions of the Building Inspector.*

The Building Inspector is responsible for plan checking, issuance of building permits, and building construction inspection services and activities. The Building Inspector is the City Code Enforcement Officer as designated by the Community Development Director.⁸¹ The Building Inspector position requires, inter alia:

- Extensive knowledge of local building codes and zoning ordinances
- Extensive knowledge of current building construction methods, materials, tools and equipment
- Knowledge of the corrective measures common to the field
- Knowledge of municipal government policies, regulations and practices. . .
- Ability to deal with the general public, elected officials and other agency personnel in person and on the phone in a professional, objective manner
- Ability to accurately applied building codes. . .
- Ability to read, understand and explain blueprints, engineering specifications, codes and regulations
- Ability to research and provide explanation of codes in technical reports and/or to project owners. . .

Education and/or experience:

- . . .Eight years experience in the construction trades including a minimum of one year as a municipal building inspector
- Certification as an International Code Inspector. . .

The circumstances surrounding Mayor Sun's appointment of Mr. Erickson as the Building Inspector have been partially detailed in section B.1, above. Prior to that time, Pacific's Building Inspector Roger Smith had gone on medical leave for mental strain that he suffered as a result of being a target of Mayor Sun's effort to remove him, after ordering him in January not to issue any more building permits. When asked in a letter by Roger Smith on January 30 if he was going to be allowed to "continue issuing permits for such things as re-roof of homes, new furnace replacements, hot water tank replacements, existing home additions etc.," Mayor Sun scrawled across the letter: "No! Not until I'm ready. Cy Sun."⁸² ⁸³ To fill the position, the city entered into an inter-local agreement with Pierce County. The county appointed Kelly Tally to fill the position.⁸⁴ Upon information and belief, Mayor Sun approached Mr. Tally and requested

⁸¹ Ex. 25. Building Inspector Final Job Description.

⁸² Ex. 26, Roger Smith letter dated January 30, 2012.

⁸³ *Montgomery Declaration.*

⁸⁴ *Ibid*, Ex. 13.

that he falsify certain building records pertaining to the Hansen Property. Mr. Tally refused.⁸⁵ The Mayor became hostile toward Mr. Tally, who notified Pierce County.⁸⁶ The county notified the City that it would no longer honor the inter-local agreement as of the end of June, 2012.⁸⁷ At a City Council meeting near the end of June, the Mayor alleged that Mr. Tally had falsified city records; although he neither identified nor produced them.⁸⁸

Neither Mayor Sun nor Mr. Erickson possesses the qualifications necessary to properly and effectively discharge the duties of the position of Building Inspector.⁸⁹ On at least one occasion, the Mayor ordered the release of a performance bond despite the fact that the work being bonded had not been performed, and despite having been told of the non-performance.⁹⁰ Notwithstanding, both of them, together and independently, approved for issuance building permits, which actions were ultra vires acts and therefore void, ab initio.⁹¹

On June 7, 2012, City Attorney Ken Luce sent to Ms. Montgomery and Mayor Sun an e-mail in which he rendered the opinion that the building permit notice that was signed by the mayor in the capacity of the Planning Department and the building department was void, and suggested to her that the building department "notify the applicant that the permit was not properly approved is invalid and to proceed he does so at his own risk. To remedy the situation the appropriate individuals in the city should reprocess the permit according to city procedures."⁹² The next day, the City Attorney sent an e-mail to Mayor Sun in which he stated the following:

Mayor,

It was brought to my attention there was a test performed on the premises at 541 Yakima to determine if the lines were able to handle the gas pressure upon connection was conducted by an unqualified individual that did not have the proper certification, qualifications or authority of the city to conduct the test. Out of great safety concerns I notified PSE and I believe PSE has notified the contractor and advised him to request (sic) a reinspection by a person qualified and authorized to do so. An improper inspection or an inspection by an unqualified person places a great amount of liability upon the city and I took the steps that I believed appropriate to protect the city.

All building inspections or permit approvals must be conducted by the appropriate city authority or qualified employee. As I have previously indicated your signing

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

⁹⁰ Ex. 27, Performance Bond Documents.

⁹¹ Ex. 28, Various Building Permits and Inspection Reports signed/approved by Mayor Sun and/or Mr. Erickson

⁹² Ex. 29, June 7, 2012 email from Ken Luce.

permit applications on behalf of the city or placing individuals not qualified in responsible positions is beyond your authority as mayor and places great liability upon the city and you must discontinue doing so.

I again request a meeting with yourself and the council president to reach an agreement and create cooperation so city functions can occur.⁹³

To date, Mayor Sun has not appointed a qualified Building Inspector. There is a substantial backlog in building permits that have not been reviewed.⁹⁴

Without City Council or Teamsters Union Local 117 authorization, Mayor Sun entered into a contract with Sound Inspection Company to conduct building inspections, as Howard Erickson was informed that his employment with the City was unlawful.⁹⁵

On June 25, 2012, Teamsters Local Union 117 Business Representative Evie Shannon wrote a letter to Mayor Sun about the fact that he had "filled the Building Inspector/Code Enforcer position with a new individual and released Howard Erikson. . . This is a bargaining unit position currently filled by Roger Smith, and can only be filled on a temporary basis, by agreement with the Union. . . the Union requests that you cease and desist using Howard Erikson or any other individual in the role of Building Inspector/Code Enforcer until the City and the Union meet and discuss the matter. The Union reserves its rights to take any legal action deemed necessary." ⁹⁶

The same day, the City Council told Mayor Sun that he was to meet with the Union immediately to discuss the situation. Mayor Sun refused. He continued to use Sound Inspections in the role of Building Inspector even after having agreed on June 28 to cease and desist.⁹⁷

7. Cy Sun interfered with Associate Planner Paula Wiech's performance of her duties.

In March, 2012, Mayor Sun announced that he was converting the city's conference room into what he called a "Control Room," and instructed the Public Works crew to "clean it out." Ms. Wiech conducts Planning Commission in Park Board Meetings in that room. She found all of her posters and maps missing, and located many of them in a dumpster, but others were missing and never located. Some of the documents she was unable to locate were historical documents and potentially irreplaceable. Mayor Sun would not reply to her when Ms. Wiech asked her to consult with staff at first before disposing of City materials.⁹⁸

⁹³ Ex. 30, June 8, 2012 email from Ken Luce.

⁹⁴ Ex. 31, List of pending building permits.

⁹⁵ *Montgomery Declaration*.

⁹⁶ Ex. 32, Teamsters Local 117 letter of June 25, 2012.

⁹⁷ Ex. 33, emails from Teamsters Local 117.

⁹⁸ Ex. 13.

Mayor Sun changed Ms. Weiss's duties and responsibilities preventing her from doing the job she was hired to do. In March, 2012, Mayor Sun told Ms. Wiech that she may only work on creating a new park on City Hall campus. When informed that wetlands on the property would need mitigation, Mayor Sun informed her that he would simply drain them; despite being told that such an action would be unlawful. On June 22, Mayor Sun came into Ms. Wiech's office as she was leaving and told her to stay out of Public Works and environmental issues. He stated that he would have other people drain the land and build the park next spring. He told her that she did not know how to be a planner and that he was sending her to school.⁹⁹

On June 25, Mayor Sun called Ms. Wiech into the "Control Room" and accused her of tampering with the City Clerk's mail, a federal offense.¹⁰⁰

On July 9, Mayor Sun told Ms. Wiech that his phone had been bugged, but that the FBI was on his side.¹⁰¹

On July 16, Mayor Sun called Ms. Wiech into his office. He accused Ms. Wiech of supporting Ms. Montgomery's "efforts to get him out." Ms. Wiech saw photos in his office taken of Ms. Wiech and Ms. Montgomery outside of Ms. Montgomery's house.¹⁰²

On July 18, 2012, the Mayor hastily called the staff meeting described in B. 1, above. He showed the staff his plan for reorganizing City Hall staff, which included outsourcing the Building Inspector and Lead Planner functions. After reading aloud the letter from Ms. Mell, he stated he was going to fire Ms. Montgomery, and that he should therefore have access to the files in the Clerk's office. He demanded that Lt. Massey (who thought he was attending a private meeting) turn over the Clerk's Office keys. I informed him that I was uncomfortable with him having unsupervised access to personnel and other sensitive files since he had destroyed public records. He instantly retaliated against Ms. Wiech, admitting he had destroyed records and "resolve litigation," and told Ms. Wiech "Get out. You are on administrative leave." Ms. Wiech received a call later that day from her union representative, who advised her that the union representative had spoken to the Mayor, and Ms. Wiech was not on administrative leave. She came back to work the next day, but became increasingly concerned about being left alone with the Mayor, who had accused her of "betraying" him on June 15. Subsequent to her return, the Mayor has falsely implied that she was incompetent and had "messed up numerous projects, including a Public Works grant applied for by an engineering firm."¹⁰³

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.*

¹⁰² *Ibid.*

¹⁰³ *Ibid.*

Since she has been unwilling to follow the Mayor's unlawful directives and has reported her concern to him, to the City Attorney, and to Council members, Mayor Sun has retaliated against her, not so much as bothering to hide his hostility toward her in the workplace.¹⁰⁴

C. *Cy Sun mismanaged the Valentine Road project.*

In 2006, the cities of Pacific and Sumner entered into an inter-local agreement to facilitate road improvements for the Valentine/136th Avenue corridor from 24th Street East to the county line (the "Valentine Project." The Valentine Project was awarded a 2007 Jobs Development Fund grant from the Washington Department of Commerce in the amount of \$4.96 million.¹⁰⁵ The Valentine Project had been underway when Mayor Sun took office.

By April, 2012 it became apparent that the city was without qualified employees to oversee the project because of Mayor Sun's actions in terminating or forcing the resignation of key employees.¹⁰⁶ On April 4, 2012, Jaclyn Woodson, Project Manager with the Dept. of Commerce, sent an e-mail to the Mayor and others expressing her concerns: "Will the City of Pacific be able to meet the attached timeline? Who will manage the project on a daily basis? This includes financial administration, and contact person for Commerce staff."¹⁰⁷

On April 12, 2012, Ms. Woodson sent an e-mail to Pacific City Council member John C. Jones, who inquired about the status of the Valentine Project. Ms. Woodson wrote: "The Community Economic Revitalization Board is extremely concerned about the project and the number of delays it has had. We met the Mayor last Tuesday, to voice the concerns and see how we can assure the Board the project can and will move forward. We emphasized the need to hire an experienced public works Project Manager and have them on board by April 30th."¹⁰⁸

On April 20, 2012, Sumner Mayor David L. Enslow sent a letter to Mayor Sun in which he wrote: "I have reviewed the April 4, 2012 email from Jaclyn Woodson. . . I do not believe you have the necessary staffing to be able to address the Department of Commerce concerns and meet the revised timelines being proposed for the project. Given our existing agreement, continuing with Pacific as the lead agency, places Sumner in considerable financial jeopardy."¹⁰⁹ As a result, Mayor Enslow suggested allowing Sumner to replace Pacific as lead entity for the Valentine Project through a "new interlocal agreement."¹¹⁰ As a result, the Pacific City Council passed a resolution in which: ". . . the Mayor Pro-Tem is required to execute an Inter-local Agreement. . . with the City of Sumner" for the Valentine Project.¹¹¹

¹⁰⁴ *Ibid.*

¹⁰⁵ Ex. 34, City of Pacific Resolution No. 12-11XX.

¹⁰⁶ *Montgomery Declaration*, Ex. 35, E-mail from Leanne Guier to State Auditor Brian Sonntag.

¹⁰⁷ *Ibid.*, Ex. 36, Email correspondence between Jaclyn Woodson and various city officials.

¹⁰⁸ *Ibid.*

¹⁰⁹ Ex. 37, Letter from David L. Enslow dated April 20, 2012.

¹¹⁰ *Ibid.*

¹¹¹ Ex. 34.

On June 12, 2012, Teamsters Local Union 117 Business Representative Evie Shannon filed a grievance on behalf of the bargaining unit regarding "the hostile work environment," telling Mayor Sun that "your behavior continues to create a work environment that is intimidating, threatening, and harassing."¹¹²

D. *Cy Sun's actions have imperiled services to the elderly and lower income residents of Pacific.*

At a staff meeting on June 4, 2012, Mayor Sun threatened that he had decided to close the Senior Center to retaliate against the City Council rejecting Leanna Mason as his hand-picked Community Services Director. Jane Montgomery, Joanne Futch, Sheryl Finwall and Betty Garrison advised Mayor Sun not to take this action. Mayor Sun finally agreed, but he stated in that meeting that he did not care about the seniors, only about what the "Council had done to him."¹¹³

E. *Cy Sun's actions led to a no confidence vote by City Council.*

On April 23, 2012, the City Council passed a Motion of No Confidence against Mayor Sun. In her letter to the Mayor explaining the supporting evidence, Council President Leanne Guier cited his tenure as Mayor as having been based on his "eroding, degrading, detrimental and costly endeavor."¹¹⁴ Perhaps the best summary of the reasons behind this extraordinary action by the City Council comes from Mayor Sun himself. In his newsletter dated May 6, 2012, Mayor Sun boasts about his "savings" for the city of \$342,359.59 in salaries of the former Public Works/Community Development Director, City Engineer, Building Inspector, and Community Services Director. He stated that he would replace the Public Works Director and City Engineer through the use of "On-call" nonpermanent, part-time personnel.

Mayor Sun goes on to say the following:

Give me some slack! . . .

The CRY of the CRITICS: The City doesn't have a Public Works/Community Development employee and an Engineer. I am ruining the City with my crazy, stupid ways of being a Mayor.

My answer: please don't tell me what to do. Let me tell "YOU", what I know: My employment folder is full of NO GOOD, REJECTED SEASONED

¹¹² Ex. 38, Teamsters Local 117 grievance letter of June 12, 2012.

¹¹³ *Montgomery Declaration.*

¹¹⁴ Ex. 39. Letter from Leanne Guier re: Council No Confidence Vote

BUREAUCRATS -MUNICIPAL LOAFERS, who were either fired or laid off by their former City employers.

REJECTS who seem to migrate from one City to another.

My definition of a Bureaucrat is a sweet talking loafer who has the talent of winning friends to hold his job and work his way up to a higher salary.¹¹⁵

F. *Cy Sun's actions and omissions have imperiled the liability coverage of the City of Pacific.*

On July 2, 2012, the actions taken by Cy Sun described more fully above led the Cities Insurance Association of Washington ("CIAW") to notify the mayor and the City Council:

that the City of Pacific's membership in the CIAW will be canceled, effective December 31, 2012. . . this action is taken after a meeting on July 2, 2012, in which the current status of the City of Pacific was made clear to the Board of Directors by the CIAW Administrator. Of primary concern to the CIAW is the vacancy in several key City staff positions. Failure to employ qualified personnel in these positions could lead to litigation. We were also made aware of other actions that could lead to litigation and appear to have been entirely avoidable. Our Board has chosen to take this proactive step to protect the CIAW.¹¹⁶

V. Conclusion.

In the short time since taking office, Mayor Sun: (1) has engaged in a pattern and practice of behavior that is unlawful, (2) has exceeded his authority as Mayor, (3) has interfered with and prevented the operation of the business of the City of Pacific, (4) has created a hostile work environment, (5) has failed to properly discharge his obligations to ensure the proper administration and enforcement of the laws including equal employment opportunity and employment discrimination laws, (6) has unlawfully retaliated against various city employees, (7) has interfered with valid contracts between the City of Pacific and third parties including collective bargaining agreements with various unions, (8) has imperiled various public works projects and grants for essential services to residents of the City of Pacific, and (9) has exposed the City of Pacific to potential liability for all of these actions as well as cancellation of its liability insurance coverage. As the Chairman for the Committee to Recall Cy Sun and a concerned resident of the City of Pacific, I respectfully request to petition the registered voters in the City of Pacific to recall Cy Sun.

¹¹⁵ Ex. 40, Mayor Sun's newsletter of 5/6/12. He goes on to write: "From what you've read, you're thinking, "Who is the Public Works/Community Development Director and Engineer for all the on-going projects? The answer is "I am!" Your \$750/month mayor -- for now!"

¹¹⁶ Ex. 41, CIAW Termination letter of 7/2/12.

I declare under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct to the best of my knowledge, and that I have sufficient knowledge of the alleged facts upon which the stated grounds for recall are based.

Dated this 23rd day of August, 2012.

Mr. Donald Thomson
Chair, Committee to Recall Cy Sun
416 2nd Ave SE
Pacific, WA 98047

JPH:tbs
enclosures
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